



# PUBLIC NOTICE

FCC MAIL SECTION

SEP 14 11 41 AM '99

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

News media information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
DISPATCH TTY 202 / 418-2555  
Internet: <http://www.fcc.gov>  
[ftp.fcc.gov](ftp://ftp.fcc.gov)

DA 99-1853

## COMMENTS REQUESTED IN CONNECTION WITH COURT REMAND OF AUGUST 1998 ADVANCED SERVICES ORDER

CC DOCKET NOS. 98-11, 98-26, 98-32, 98-78, 98-91, 98-147

Released September 9, 1999

In an August 7, 1998 decision, the Commission considered petitions filed by four Bell Operating Companies (BOCs) requesting that the Commission forbear from applying the obligations of section 251(c) to advanced services in view of section 706(a) of the Telecommunications Act of 1996. In that Memorandum Opinion and Order (Advanced Services Order), the Commission concluded that incumbent local exchange carriers (LECs) are subject to the market-opening requirements of section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, in their provision of advanced services.<sup>1</sup>

More specifically, the Commission determined that incumbent LECs are subject to the interconnection obligations of section 251(a) and 251(c)(2) with respect to both their circuit-switched and packet-switched networks. In the Advanced Services Order, the Commission determined, among other things, that incumbent LECs are subject to the obligations set forth in section 251(c) of the Act in connection with the offering of advanced services that employ digital subscriber line (DSL) and packet-switching technologies. The Commission based that conclusion on the determination that those services were either telephone exchange service or exchange access—the core service categories that define a LEC. At that time, the Commission did not determine into which of those two service categories advanced services fall, noting instead that related issues would be addressed in other proceedings.

Following adoption of the Advanced Services Order, U S WEST Communications, Inc. (U S WEST) sought review in the United States Court of Appeals for the District of Columbia Circuit, seeking reversal of the Commission's holding that advanced services are either telephone exchange or exchange access. In response, the Commission requested the opportunity to consider further the issues raised by U S WEST because some of the statutory construction arguments advanced by U S WEST in its appellate brief had been presented only summarily and in truncated form before the agency. The Commission therefore asked that the court grant it the opportunity to address the threshold question of statutory interpretation based on a more

<sup>1</sup> See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 15280 (1998).

complete administrative record. On August 25, 1999, the court granted the Commission's request and remanded the matter back to the Commission.<sup>2</sup>

We have placed a copy of U S WEST's appellate brief in the above-captioned dockets. To aid the Commission in meeting its commitment to the court to consider and address within 120 days the issues raised by U S WEST, the Common Carrier Bureau issues this Public Notice seeking comment on the arguments raised by U S WEST before the D.C. Circuit. We ask that the parties address the following issues, as well as any additional issues previously raised before the Commission or the court that are relevant to this inquiry.

1. Do xDSL-based advanced services constitute either "telephone exchange service" or "exchange access" within the meaning of the Communications Act? U S WEST argues that DSL-based services do not constitute telephone exchange service because they do not begin and end within a telephone exchange or set of exchanges in the same local area; do not use or interconnect with the traditional circuit-switched public telephone network; do not permit "any-to-any" local intercommunications service; and are not covered by the exchange service charge. We seek comment on each of these contentions and the proper interpretation of these terms as they are used in the first half of the definition of "telephone exchange service," 47 U.S.C. § 153(47)(A).

2. What is the legal significance of the 1996 Act's addition to the definition of "telephone exchange service" of "comparable service provided through a system of switches, transmission equipment or other facilities . . . by which a subscriber can originate and terminate a telecommunications service"? U S WEST argues that Congress' use of the word "comparable" in its definition of telephone exchange service was meant to include those services that are functionally similar to and can substitute for switched local service. We seek comment as to the proper definition of this term and whether "comparable service provided through a system of switches, transmission equipment, or other facilities" is limited to a particular technology or technologies or has other defining characteristics.

3. Additionally, we seek comment on U S WEST's contention that advanced services are not "exchange access" because they are used to originate and terminate Internet traffic and not telephone toll service. In this regard, is "exchange access" a subset of "telephone exchange service" or a distinct category of service? Further, U S WEST argues that DSL-based services are "information access" services. We ask parties to address whether and in what way that category of service differs from "information services"? If DSL-based services are classified as "information access," can those services nonetheless be information services, telephone exchange services, or exchange access? In addition, we request comment regarding the extent to which these categories of service are mutually exclusive. We ask that parties address these issues in view of the relevant statutory language and Commission and judicial precedent.

4. We also request comment as to the proper scope of the requirements of section 251(c) upon incumbent LECs generally and in their provision of advanced services specifically. Does that section, for instance, apply to all telecommunications services and facilities offered by an incumbent LEC regardless of whether the services or related facilities constitute telephone exchange service or exchange access? In this regard, how does the fact that section 251(c) sets

---

<sup>2</sup> See *U S WEST Communications, Inc. v. Federal Communications Commission*, No. 98-1410 (D.C. Cir. Aug. 25, 1999) (order granting motion for remand).

forth obligations of incumbent local exchange *carriers*, and is not on its face limited to particular telecommunications *services*, affect the provision's applicability to incumbent LEC offerings other than telephone exchange service or exchange access?

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before September 24, 1999, and reply comments not later than October 1, 1999. All filings should refer to the Commission docket numbers, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91, and 98-147. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Parties choosing to file by paper must file an original and two copies of each pleading with the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. A copy should also be sent to Janice Myles, Common Carrier Bureau, Policy and Program Planning Division, Federal Communications Commission, Room 5-C327, 445 12th Street, S.W., Washington, D.C. 20554. One copy of all pleadings should also be sent to the Commission's contractor for public service records duplication, ITS, 1231 20<sup>th</sup> Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554. Copies may also be obtained from ITS at 1231 20<sup>th</sup> Street, N.W., Washington, D.C. 20036 or by calling ITS at (202) 857-3800 or faxing ITS at (202) 857-3805.

We will continue to treat this proceeding as "permit-but-disclose" for purposes of the Commission's *ex parte* rules. See 47 C.F.R. § 1.1206.

Common Carrier Bureau contact: Staci Pies, (202) 418-1580.